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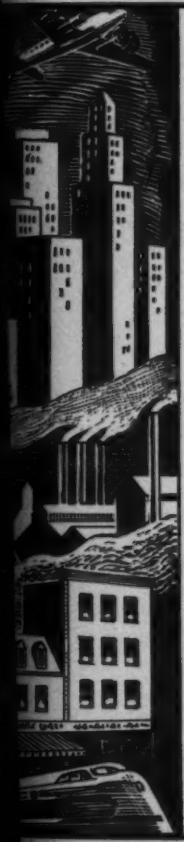

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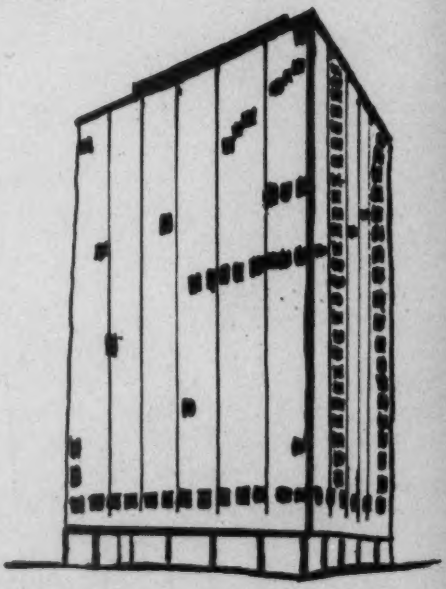

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AUGUST—SEPTEMBER 1956

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Recent Decisions

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doing business in canada

Newfoundland—Foreign Corporations

NEWFOUNDLAND, which became the tenth Province of the Dominion of Canada on March 31, 1949, has enacted provisions to regulate the doing of business by foreign corporations.

Prior to July 1, 1956, there were no statutes relating to foreign corporations and it was possible for such corporations to carry on business without registering or otherwise qualifying to do business as foreign corporations.

On July 1, 1956, Act 40, Laws of 1956, enacted a foreign corporation law, identified as Part VI of the Companies Act, to govern foreign corporations, including corporations organized under the Canadian law, carrying on business in Newfoundland.

The new law contains provisions requiring every foreign corporation to be registered with the Provincial Registrar of Companies, St. John's, Newfoundland, within thirty days after commencing business in the Province. Those foreign corporations carrying on business on July 1, 1956 are given sixty days thereafter within which to register.

Such registration involves the filing with the Registrar of (1) a Statement, (2) a verified copy of the charter and by-laws of the corporation, (3) a statutory declaration by a Newfoundland solicitor that the law has been complied with and (4) a Power of Attorney designating an agent for service of process. The fees for registration are fixed by the Lieutenant-Governor in Council.

The name of the foreign corporation is required to be painted or affixed outside its head office and every other office in which it carries on business in Newfoundland.

Whenever a foreign corporation amends its charter or its by-laws, it must file a duly certified copy thereof with the Registrar within one month of the time the change is effective.

An annual return is required to be filed with the Registrar of Companies, by each foreign corporation, not later than March 1 of each year after the date of registration.

The act provides that no company, domestic or foreign, may be registered with a name (a) containing the words "Newfoundland," "Labrador," "Royal" or "Imperial" or other words suggesting Royal or Governmental Patronage without approval of the Lieutenant-Governor in Council; (b) containing the words "Canada" or "Canadian" without the approval of the Attorney General, or (c) which in the opinion of the Registrar is objectionable on any other grounds. We are informed that the Registrar of Companies takes the position that Section 20 applies only to companies incorporated under the

laws of the Province of Newfoundland and is not applicable to foreign corporations registered in the Province under the provisions of Part VI of the act.

Various provisions of the Companies Act relating to domestic corporations are made applicable to foreign corporations.

domestic corporations

DELAWARE

Although agreement between majority stockholders and majority of directors, whereby latter were to act as the majority stockholders' agents and function as a unit, was ruled invalid, agreement's severable provisions as to stockholders may be enforced.

In *Abercrombie et al. v. Davies et al.*, decided by the Court of Chancery, New Castle County, January 16, 1956, (The Corporation Journal, April—May, 1956, page 204), the court concluded that an agreement between majority stockholders and a majority of directors, whereby this majority of directors was to act as the majority stockholders' agents and to function as a unit, was invalid as an unlawful attempt by certain stockholders to encroach upon the statutory powers and duties imposed on directors by the Delaware Corporation Law.

In a further opinion, upon reargument, the court, while concluding that the parties would have intended to have the agreement stand even though the director provisions were declared invalid, regarded stockholder provisions of the agreement, relating to the stockholders' power to elect directors, officers and agents, as severable from the invalid director provisions and consequently ruled that the stockholder provisions could not be declared invalid.

Abercrombie et al. v. Davis et al., Court of Chancery, New Castle County, April 30, 1956. John J. Morris, Jr., of Morris, James, Hitchens and Williams of Wilmington and Joseph W. Moore, of Fouts, Amerman & Moore of Houston, Texas for plaintiff, James S. Abercrombie. Robert H. Richards, Jr., and Stephen E. Hamilton, Jr., of Richards, Layton and Finger of Wilmington for plaintiffs, Phillips Petroleum Company and Sunray Oil Corporation. Richard F. Corroon and David F. Anderson of Berl, Potter and Anderson of Wilmington and Francis M. Shea and Warner W. Gardner of Shea, Greenman, Gardner and McConnaughey of Washington, D. C. for defendants, Signal Oil and Gas Company, The Hancock Oil Company, Lario Oil and Gas Company, Ralph K. Davies, The Globe Oil and Refining Company, Samuel B. Mosher, Garth L. Young, John W. Hancock, Harold A. Black, Francis L. Jehle, and J. Howard Marshall. William Duffy, Jr., of Wilmington for defendant, American Independent Oil Company.

Defendants Ashland Oil and Refining Company, Deep Rock Oil Corporation, Rexford Blazer, Sandford M. Burnam and Security First National Bank of Los Angeles, California failed to appear.

Alleged corporate business opportunity in which corporation had no interest, actual or in expectancy, rejected by State Supreme Court as basis for stockholders' derivative suit.

In *Greene et al. v. Allen et al.*, 114 A. 2d 916, (The Corporation Journal, October—November, 1955, page 145), the Court of Chancery, New Castle County, held that where a corporate investment opportunity was accepted in part and rejected in part by directors, and the rejected portion was then accepted by a director, a stockholder could question the good faith rejection by the directors.

Upon appeal, the Supreme Court of Delaware, has reversed the judgment of the Court of Chancery and directed a dismissal of the complaint. The higher court, after a careful review of the record, ruled that the corporation had no interest, actual or in expectancy, in the investment opportunity under consideration. It found that there was no tie-in between that business and the nature of the corporation's business. It also held that the transaction involving the acceptance by the director of a portion of the investment opportunity was fair and free of any overreaching or inequitable conduct.

Johnston et al. v. Greene et al., 121 A. 2d 919. Aaron Finger, Henry M. Canby, Louis J. Finger of Richards, Layton & Finger of Wilmington, and Cyrus R. Vance of Simpson, Thacher & Bartlett of New York City, for appellants. Irving Morris of Wilmington, and Milton Paulson and Paul Roberts of New York City, for appellees.

State Supreme Court affirms ruling that stock, purchased on margin and continuously held by brokers, constituted purchaser a stockholder for purposes of derivative suit.

In *Saks v. Gamble et al.*, 118 A. 2d 793, (The Corporation Journal, February—March, 1956, page 184), the Court of Chancery held that stock purchased on margin and continuously held by brokers, constituted the purchaser a stockholder who could maintain a derivative suit on behalf of the corporation, based upon alleged diversion of certain corporate opportunities. Upon appeal, the Supreme Court of Delaware has affirmed the order of the Chancellor.

Gamble-Skogmo, Inc. et al. v. Saks, 122 A. 2d 120. Ernest S. Wilson, Jr., of Morford & Bennethum, of Wilmington, for appellants. William S. Potter and James L. Latchum of Berl, Potter & Anderson of Wilmington, and Leonard I. Schreiber and Sidney L. Garwin of New York City, for appellee.

Stockholder permitted to maintain suit where stock was acquired before completion of transaction concerning which he complained.

Section 327 of the General Corporation Law provides that "in any derivative suit instituted by a stockholder of a corporation organized under the laws of this State, it shall be averred in the complaint that the plaintiff was a stockholder of the corporation at the time of the transaction of which he complains or that, his stock thereafter devolved upon him by operation of law." Plaintiff, whose status under this section defendants contested, became a stockholder three months prior to the holding of a general meeting of stockholders of his corporation at which an exchange of shares of certain shareholders was approved by the stockholders. Plaintiff charged these exchanges constituted illegal stock exchanges.

The Court of Chancery, New Castle County, after an examination of the negotiations between the corporation and the stockholders whose shares were exchanged, concluded that the transaction of which plaintiff complained was legally completed when the stockholders voted their approval and noted that this approval was admittedly given after plaintiff became a stockholder. His claim was therefore not regarded as barred by the statute or rule of court.

Lavine v. Gulf Coast Leaseholds, Inc. et. al., 122 A. 2d 550. Irving Morris of Cohen & Morris of Wilmington, and Edward Lee of New York City, for plaintiff. Arthur G. Logan and Aubrey B. Lank of Logan, Marvel, Boggs & Theisen of Wilmington, for defendant, Gulf Coast Leaseholds, Inc., and individual defendants other than John Doe and Richard Roe. Clair J. Killoran of Killoran & VanBrunt of Wilmington, for defendant Leason & Co., Inc.

ILLINOIS

Executive committee, consisting of persons not directors of corporation and appointed by president without approval of board of directors, ruled in violation of statute.

The Appellate Court of Illinois, First District, Second Division, said: "The principal question is the validity of the appointment by the president of an executive committee composed of non-directors and the action of that committee in providing compensation for the president in addition to that fixed by the board." The lower court had held that this was in violation of Section 38 of the Illinois Business Corporation Act.

The facts disclosed that the board of directors of the defendant corporation, over the objection of the plaintiff who was one of the three directors of the corporation, adopted an amendment to the by-laws authorizing the appointment of an executive committee consisting of three persons who were not directors. The president selected the committee which approved additional compensation for the president and others. The plaintiff's petition for an

injunction, ruling that the executive committee was in violation of the statute, was granted. The defendant corporation appealed.

The court stated that the statute clearly supported the plaintiff's position: "An executive committee must be composed of two or more *directors*. Nondirectors cannot sit on such a committee." It was noted that this question had never been passed on by a court of review in Illinois. The court also pointed out that the by-laws, instead of giving authority to the board of directors to designate the membership of the committee, gave it to the president and that this too was in violation of the statute. Lastly, the court held that the president, through the appointment of an executive committee, could not obtain additional compensation without the approval of the board.

Steigerwald v. A. M. Steigerwald Co., et al., 132 N. E. 2d 373, O'Keefe, O'Brien & Hanson, James H. O'Brien of Chicago, for appellant. Johnson & Wiles, Walter E. Wiles of Chicago, of counsel, for appellee.

NEW YORK

Plant relocation, forming part of expansion of corporate business activity, held not to constitute basis for appraisal and payment for stock.

Two owners of approximately one-fourth of the outstanding stock of the respondent company applied for an appraisal and recovery of the value of their stock pursuant to Sections 20 and 21 of the Stock Corporation Law. Petitioners based their right to the relief sought upon a resolution, passed over their objections at a special meeting of stockholders, whereby the corporation was authorized to sell its land and factory buildings in New York State and to transfer its manufacturing operations to a Pennsylvania city.

The New York Supreme Court, Special Term, Kings County, Part I, found that the proposed plant relocation and possible sale of obsolete buildings did not call for any discontinuance of, or in diminution in, the corporation's business, or for a surrender of any of its franchise powers, and that the action indicated planning on its part for the improvement and expansion of its business activity, the carrying out of which was well within the charter powers and in the regular course of the company's business. "Thus," said the court, "it is shown that Section 20 is inapplicable." The acceptance of dividends by the petitioners shortly after they notified the corporation of their election to demand an appraisal of and payment for their shares was not regarded by the court as constituting an election to waive the statutory rights asserted by them. The application of the petitioners was denied and their petitions dismissed.

Rudel et al. v. Eberhard Faber Pencil Co., Inc., 146 N. Y. S. 2d 498. Saxe, Bacon, O'Shea & Byran of New York City, for petitioners. Mebel & Sessa of Brooklyn, for respondent.

OHIO

Ohio Supreme Court holds statute providing for cumulative voting of directors conferred right of such voting and did not ensure minority representation on board of directors.

The Court of Appeals of Ohio in *Humphrys et al. v. The Winous Company et al.*, 125 N. E. 2d 204, (The Corporation Journal, June—July 1955, page 108), faced with two conflicting sections of the same statute, one of which authorized cumulative voting and the other which permitted staggered election of directors, ruled invalid a resolution of the corporation which attempted to classify its three directors by providing for three-year terms staggered so that one director would be elected each year and thus, in effect, prevented cumulative voting.

The Supreme Court of Ohio, upon the corporation's motion to certify the record, asked the questions: "In enacting Section 1701.58 Revised Code, did the General Assembly intend, as urged by appellants, to guarantee only that the *right* to vote cumulatively shall not be restricted or qualified? Or did it intend to guarantee that the effectiveness of cumulative voting to ensure minority representation on the board of directors shall not be restricted or qualified?" After a review of the legislative intent and of related cases in other states, the court assumed that the General Assembly in enacting two statutes intended to give effect to both. It held that the guaranty provided in Section 1701.58, R. C., "must be construed as one granting a *right* that may not be restricted or qualified rather than one *ensuring* minority representation on the board of directors." The judgment of the Court of Appeals was reversed.

The court noted, in passing, that the possibility of a recurrence of the action taken by the company was obviated by the enactment of Section 1701.57, effective October 11, 1955, requiring that each class of directors must consist of not less than three directors each.

Humphrys et al. v. The Winous Co., et al., 133 N. E. 2d 780. Horace Andrews and Lad J. Roth of Cleveland, for appellants. Thompson, Hine, & Florey and H. Walter Stewart of Cleveland, for appellees.

PENNSYLVANIA

Shareholders' action to compel declaration of dividend ruled one to enforce a personal right of shareholders, not requiring security for costs.

The plaintiffs, residents of New York, brought an action against the defendant Pennsylvania corporation and its directors to compel the declaration of dividends by the corporation, in which they were shareholders, owning less than 5% of the stock. The Federal District Court had denied the corporation's motion for an order requiring the plaintiffs to furnish security for costs pursuant to a Pennsylvania statute and the corporation appealed.

The United States Court of Appeals, Third Circuit, stated the question presented on appeal as "whether a shareholders' action against the corporation and its directors to compel the declaration of dividends is a suit to enforce a secondary or derivative right on the part of the shareholders within the meaning of the Pennsylvania security for costs statute". The statute provides that a corporation shall be entitled to security for expenses incurred in connection with a suit brought by shareholders of less than 5% of the outstanding shares of any class of stock to enforce a secondary right on the part of the shareholders because the corporation refuses to enforce rights which may properly be asserted by it. The court observed that, under Pennsylvania law, the plaintiff's suit to compel the declaration of dividends must be regarded as one brought to vindicate a primary and personal right of the shareholder and not one to enforce a secondary right derived from the corporation as the real party in interest. It emphasized that "if the directors have wrongfully withheld the declaration of dividends the shareholder is the injured party", and that a successful outcome of such a suit would benefit only the shareholders. Therefore, the order of the District Court denying the defendant corporation's motion for security for costs was affirmed.

Knapp et al. v. Bankers Securities Corporation et al., 230 F. 2d 717. Bernard G. Segal, Gilbert W. Oswald, Edward W. Mullinix, (Samuel D. Goodis, Folis, Bard, Kamsler, Goodis & Greenfield, Schnader, Harrison, Segal & Lewis, on the brief), of Philadelphia for appellant. Samuel H. Landy, (Charles Lakatos, Martin J. Vigderman, Freedman, Landy & Lorry, on the brief), of Philadelphia for appellee.

UTAH

Utah Supreme Court rules directors could not disclaim responsibility for transfer of corporate assets under a reorganization on ground that reorganization was directed by stockholders.

The plaintiff, a stockholder of one of the corporate defendants—a Utah corporation—had refrained, through her proxy, from assenting to a reorganization of the company. It was proposed at a special meeting of stockholders that the Utah corporation be reorganized under the laws of Nevada, with the same name, and that the stock in the Utah corporation be exchanged share for share for stock in the Nevada corporation, and that all of the assets of the Utah corporation be transferred to the Nevada corporation, the latter to assume all of the former's debts. The directors of the corporation maintained that the plaintiff's proxy had voted for the reorganization. In any event, the remaining stockholders present at the meeting approved the reorganization. No provision was made for the payment for the stock of any dissenting stockholder except by transfer of stock in the Nevada corporation. The plaintiff brought an action against the defendant directors and against both the old and the new corporations to have the conveyance to the Nevada corporation declared void, and to have the defendants ordered to reconvey the assets to themselves in trust for liquidation and distribution of the proceeds among

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the stockholders of the Utah corporation according to their stockholdings, or in the alternative, for judgment against the individual defendants for conversion of the plaintiff's "rights" in the property of the dissolved Utah corporation. The trial court rendered judgment for the plaintiff under her alternative prayer, whereupon the directors appealed. The defendant directors disclaimed liability to plaintiff because the reorganization was directed by the stockholders and because the President and Secretary were authorized to consummate it, rather than the directors.

The Supreme Court of Utah remarked that the appellant directors could hardly disclaim responsibility for the transfer of the assets under the reorganization on the ground that it had been directed by the stockholders. The court observed that such an act of transfer of assets of the Utah corporation to the Nevada corporation was in the highest sense an exercise of the corporate power of the corporation and, according to statute, was required to be effected by the board of directors. Furthermore, the court noted that it was an established rule that a corporate reorganization involving a solvent corporation, as was the case with the Utah corporation, required the stockholders' unanimous consent. The judgment for the plaintiff was, therefore, affirmed.

Carter v. Spencer et al., 286 P. 2d 245. J. D. Skeen of Salt Lake City, for appellants. Calvin L. Rampton of Salt Lake City, for respondent.

foreign corporations

ARIZONA

Lease of real property by unlicensed foreign corporation, prior to doing business, ruled valid by Federal court.

The Arizona statute which stipulates that no foreign corporation shall transact any business until it has qualified also provides that "every act done by said corporation prior thereto shall be void." Appellant foreign corporation entered into a lease of premises from the appellee, prior to using the premises for two years, without qualifying, and manufacturing its goods there.

The United States Court of Appeals in holding that the lease was not void, emphasized that a distinction could be drawn between an act preparatory to entering business and an act of carrying on or pursuing business. It concluded that the execution of a lease, an act which is merely incidental and preliminary to the business in which the corporation is ordinarily engaged or is about to engage, does not constitute "entering upon, doing or transacting any business, enterprise or occupation" within the meaning of the Arizona statute, and is not void.

Worcester Felt Pad Corporation v. Tucson Airport Authority, 233 F. 2d 44.

CALIFORNIA

Mexican corporation, making sales by telephone and entering California solely to make deliveries and collections, ruled engaging in foreign commerce and not required to qualify so as to maintain an action.

In an action against them for money due, the appellants maintained that the action should be abated for the reason that the respondent, the plaintiff below, was a foreign corporation which did business "repeatedly and successively" in California without having filed its articles. From an adverse decision in the trial court, the appellants appealed to the California District Court of Appeal, Second District, Division Two.

The court remarked: "There is no basis for requiring respondent to file its articles in California. It did no business within this state except as incidental to its foreign commerce. It is a Mexican corporation which made its sales by telephone to its trade in California and came into the state solely for the purpose of making deliveries and collections. It manufactured nothing in California, neither did it peddle its products nor assemble them here for selling. It was, therefore, engaged in foreign commerce only." The court further observed that the state cannot impose a burden upon any person or corporation engaged wholly in interstate or foreign commerce and "therefore a foreign tradesman may freely enter this state for the purpose of delivering its merchandise lawfully sold here and of collecting the purchase price thereof." In addition, the court found that the respondent was not doing intrastate business because its agents now and then resold an automobile after it had been rejected by the vender.

The judgment of the trial court was affirmed, since it was established that the respondent did not transact intrastate business in California as defined by statute.

Automotriz Del Golfo de California S. A. de C. V., v. Resnick et al., 292 P. 2d 578. Levy, Bernard & Jaffe and George W. Rochester, for appellants. Francis B. Cobb for respondent.

NEW YORK

Guatemala corporation, doing only casual or occasional business in state and represented by independent broker, ruled not subject to process.

This was a motion to set aside service upon one of the corporate defendants, on the grounds that it was a Guatemala corporation not doing business in New York State and that the person upon whom the disputed service was made was not a person upon whom such service could be made pursuant to section 229 of the Civil Practice Act.

At the outset, the Supreme Court, Kings County, said that it was immaterial who was served, if the Guatemala corporation was not doing business in the state. Service was made upon an independent broker who represented the corporation as one of many clients and who solicited orders for the company on an irregular basis. The Guate-

mala corporation stated by affidavit that all of its business was conducted from Guatemala and that it had neither an office, bank account, telephone nor agent in New York.

The court, in granting the motion, concluded that there was nothing before it which indicated that the corporation's business in New York was other than casual or occasional, and accordingly, it was not subject to process.

Ippisch v. Moricz-Smith, 145 N. Y. S. 2d 592. Ehrich, Stock, Leighton & Holland (Albert D. Jordan, of counsel) of New York City appearing specially for Compania Agricola Industrial Guatemalteca, S. A. Arnold Davis of New York City, for Maria A. Moricz-Smith defendant and third-party plaintiffs.

Foreign corporation maintaining a sales office and selling goods in state and using New York address on letterhead held amenable to process.

The plaintiff, a New York resident, brought an action against the defendant unlicensed Maryland corporation which was engaged in manufacturing dresses, having its factory, office and other facilities in Baltimore, Md. It maintained an office in New York City used as a "convenient point" for salesmen to see buyers "who happen to be in the City of New York" and for its secretary-treasurer to meet such salesmen and see resident buyers "every second week". The summons was served on the secretary-treasurer on his regular business trip in the state. The corporation signed the lease for the office and paid the rent. It letterhead gave the Baltimore and New York addresses. The corporation's shipments into New York comprised about 1½% of its entire sales. The Supreme Court, Special Term, Bronx County, Part I, denied the defendant's motion to set aside the service upon the ground that it was not doing business in the state, regarding the facts as sufficient to hold defendant subject to the jurisdiction, particularly as this was an action by a New York resident for breach of a contract of employment which, in some respects at least, involved the office and activities of the defendant in New York.

Blond v. Bernard Land and Sons, Inc., 145 N. Y. S. 2d 234. Arthur K. Ash, of New York City, for plaintiff. Chester A. Hahn, of New York City, appearing specially for defendant.

OHIO

Unlicensed foreign corporation, doing interstate business, ruled not amenable to service of process.

Service of summons was made upon an individual allegedly the managing agent of the defendant company in Ohio. The defendant moved to quash the service upon the ground that it was a foreign corporation not doing business in Ohio. The motion was denied and judgment was entered, whereupon the defendant appealed to the Court of Common Pleas, Hamilton County. It was disclosed that the defendant, a New York corporation not licensed to do business in Ohio, had a salesman, the individual served, who lived in Cin-

cinnati, and solicited orders in Ohio and neighboring states. Orders received were sent to New York for acceptance and goods were shipped from the defendant's plant in Indiana. The corporation had no plants or any other property or assets in Ohio.

The court ruled that the defendant was not doing business in Ohio, that the person served was not a managing agent within the meaning of the statute and that the motion to quash the service should have been sustained and the judgment set aside.

Reliable Loan Company, Inc. v. Thatcher Glass Mfg. Co., Inc., Court of Common Pleas, Hamilton County, Ohio, May 10, 1956. Robert A. Wood and Richard K. Ewan for defendant—appellant. Lee B. Kasson, Jr., for plaintiff—appellee.

taxation

CALIFORNIA

Income received from intangible assets ruled properly included in measure of foreign corporation's franchise tax where evidence showed its commercial domicile was in California.

This appeal to the California District Court of Appeal, Third District, was concerned with the propriety of including, in the measure of the California franchise tax, income received by the taxpayer, and its predecessor, both Delaware companies, from intangible assets, consisting of stocks, bonds and notes physically located outside of California. The Franchise Tax Commissioner contended that the commercial domicile of the companies was in California and these security holdings were related to and useful in the business carried on by the corporations in California

After an exhaustive examination of the facts, the court concluded that the commercial domicile was in California and affirmed a judgment of the trial court in favor of the defendant Franchise Tax Board in this action brought to recover franchise taxes paid under protest.

Pacific Western Oil Corporation v. Franchise Tax Board,* 289 P. 2d 287. Musick, Peeler & Garrett, for appellant. E. G. Brown, Attorney General, James E. Sabine and Irving H. Perluss, Assistant Attorneys General, and Ernest P. Goodman, Deputy Attorney General. (*Appeal filed in the Supreme Court of the United States, May* 21, 1956; *Docket No.* 959.)

*The full text of this opinion is printed in the **State Tax Reporter**, California, page 12,893.

MISSISSIPPI

Foreign company, carrying on dredging operations in state and elsewhere, required to use specific accounting to determine Mississippi income taxes, where net income within state could be ascertained.

The plaintiff corporation appealed to the Supreme Court of Mississippi from a decree for additional income taxes assessed against it for the years 1951 and 1953. The company was an Illinois corporation engaged in dredging operations in Mississippi and other states. For the years in question, it had filed income tax returns using the manufacturer's apportionment formula to determine Mississippi income taxes, taking the position that a dredge was a floating factory. The Tax Commission rejected the company's formula, contending that specific accounting should have been used and, after a hearing, an additional assessment was made using specific accounting.

The court noted that the auditors of the Tax Commission experienced no insurmountable difficulty in ascertaining from the books of the corporation its receipts from each project together with expenses properly chargeable thereto. Remarking that the law of Mississippi unquestionably favored the specific accounting by foreign corporations and that theories of allocation had no place in determining Mississippi income taxes of foreign corporations if the net income within the state could be distinguished from outside business, the court affirmed the additional assessment.

*McWilliams Dredging Company v. McKeigney,** 86 So. 2d 672. John E. Stone of Jackson, for appellant. Tighe & Tighe of Jackson, *for appellee.*

*The full text of this opinion is printed in the Mississippi **State Tax Reporter**, Page 10,074.

NEW MEXICO

State gross income tax held not to apply to foreign company sending employees into New Mexico to gather scientific data, analyzed in another state, upon which reports were made to customers in states other than New Mexico.

The appellee, a Delaware corporation with its principal office in Oklahoma, maintaining no branch or agencies in New Mexico, on behalf of its clients in states other than New Mexico, sent employees into that state to gather geophysical data by means of the operation of scientific instruments and equipment. This data, sent to Tulsa, Oklahoma, was studied there and reports were subsequently made to those who had contracted for such reports. The appellee had filed suit in a county district court to recover state gross income taxes paid under protest to the Bureau of Revenue, based upon such New Mexico activities, contending that the taxes were illegally levied.

The New Mexico Supreme Court affirmed a judgment for the appellee,

the plaintiff below, holding that the corporation was not engaged in intrastate business in New Mexico, and that the tax laid upon its gross receipts from the preparation and opinions and supporting data in Oklahoma, which were delivered to its clients in other states, was invalid.

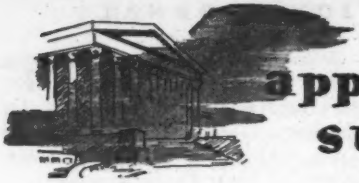
Seismograph Service Corporation v. Bureau of Revenue, 293 P. 2d 977. M. W. Hamilton of Sante Fe, for appellant. Joseph L. Hull, Jr., of Tulsa, Oklahoma, and Seth & Montgomery of Sante Fe, for appellee.

state legislation

Arizona — A use tax has been imposed by House Bill 4, Second Special Session of 1955, effective July 1, 1956, at the rate of 2% of the sales price on the storage, use or consumption in Arizona of tangible personal property purchased from a retailer. Monthly returns are required of retailers and of purchasers who do not make payments of the tax to a retailer. Registration of retailers is required before selling any tangible personal property for storage, use or consumption in Arizona.

Massachusetts — With respect to that part of the corporation excise tax on business and manufacturing companies which is based on net income apportioned to Massachusetts, House Bill 2910 imposes for another year, a temporary additional tax of 3%, which retains the total rate on such income at 5½% for the calendar year 1957, based on income of the preceding calendar or fiscal year. This act also continues a surtax of 20% of the corporation excise tax, which will be added to the tax assessed in or on account of the calendar year 1957.

Pennsylvania — House Bill No. 2101 effected substantial amendments to the selective sales and use tax requirements. In addition to bringing about some additions to the taxable items and providing exceptions with respect to others, the tax reaches each separate sale at retail. Provision is made for a change from monthly to quarterly reports and remittances after December 31, 1956, and for the collection, on and after January 1, 1957, of the tax by means of prepaid tax receipts.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ARKANSAS. Docket No. 793. *Lesie Miller, Inc. et al. v. The State of Arkansas,* 281 S. W. 2d 946. (The Corporation Journal, February—March, 1956, page 192.) Contractors' state license—government contracts—federal areas. **Appeal filed, March 23, 1956. Probable jurisdiction noted and case transferred to summary calendar, May 28, 1956.**

CALIFORNIA. Docket No. 959. *Pacific Western Oil Corporation v. Franchise Tax Board,* 289 P. 2d 287. (The Corporation Journal, August—September, 1956, page 255.) Income tax—income from intangible assets—commercial domicile in California. **Appeal filed, May** 21, 1956.

*** Data compiled from CCH U. S. Supreme Court Bulletin, 1955-1956.**

regulations and rulings

Georgia — The State Revenue Commissioner has the authority to file an income tax return for a taxpayer based upon the best information available where the taxpayer fails or refuses to file a return. The Commissioner cannot issue a writ of attachment without making a formal assessment. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 200-057.)

Illinois — When a purchaser which engages in business in more than one state purchases tangible personal property outside Illinois so that only the use tax is in question, the seller need not collect the use tax from the purchaser if the purchaser certifies to the seller that the tangible personal property will be stored or held in Illinois only temporarily and subsequently will be used exclusively outside Illinois. (Letter, Supervisor of Rules and Regulations, Department of Revenue, State Tax Reporter, Illinois, ¶ 200-013.)

Maryland — Domestic corporations subject to the franchise tax are required to pay the tax at the time the report is filed. The State Tax Commission is authorized to determine the severity of the penalty where a corporation fails to comply with this requirement. The Commission has the right to waive the penalty where the circumstances of the case warrant such action. (Opinion of the Attorney General to the Secretary of the State Tax Commission, State Tax Reporter, Maryland, ¶ 200-093.)

Michigan — A Michigan corporation for profit which failed to file a certificate of dissolution must file an annual report and pay the privilege fee even though it passed a resolution to dissolve. (Opinion of the Attorney General to the Michigan Corporation and Securities Commission, State Tax Reporter, Michigan, ¶ 200-205.)

North Carolina — A company which rents trucks is a retail merchant and must collect the retail sales tax on rentals and must pay the wholesale tax on the trucks which it buys to rent. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 60-141.)

A foreign corporation maintaining an inventory in a warehouse in North Carolina, from which shipments are made to merchants in North Carolina and to persons outside the state, is doing business in North Carolina for income tax purposes. Sales made through the warehouse should be included in the sales factor. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 200-060.)

Oregon — A multi-state corporation centrally managed, engaging in national advertising activities and distributing the costs of the central activities on a proportionate fee basis to its several branches, is unitary in character and must report income by an apportionment formula. (Ruling of State Tax Commission, Income Tax Division, State Tax Reporter, Oregon, ¶ 200-270.)

some important matters

For August and September

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Arizona — Annual Report and Fee due on or before September 30.—Domestic and Foreign Corporations.

Arkansas — Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

California — Franchise Tax based on net income. Second installment due on or before September 15.—Domestic and Foreign Corporations.

Connecticut — Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31 of any previous year).—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Kentucky — Report of Unclaimed Dividends, etc., due on or before September 1.—Domestic and Foreign Corporations.

Louisiana — Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

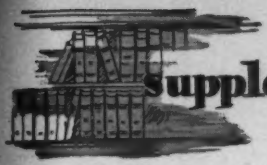
Maine — Annual Franchise Tax due September 1; delinquent one month later.— Domestic Corporations.

Oklahoma — Annual Franchise Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

Oregon — Annual License Fee due August 15.—Domestic Corporations.
Annual License Fee due August 15.—Foreign Corporations.
Report of Abandoned Property due on or before September 1.—Domestic and Foreign Corporations.

Quebec — Annual Return to Provincial Secretary due on or before September 1.—Domestic and Foreign Corporations.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.



supplementary literature

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What Constitutes Doing Business (1956 Edition). A 182-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

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When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

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